2011 IL App (4th) 100155-U

Filed 9/30/11

NO. 4-10-0155

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHARTRESE L. GRAYNED, Defendant-Appellant.	)	Appeal from Circuit Court of Macon County No. 09CF1128 Honorable Theodore E. Paine, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Where the State's case was strong and the trial court quickly sustained the objection to the improper statement, the trial court did not abuse its discretion by denying defendant's motion for a mistrial based on the violation of the order *in limine*.

¶ 2 In July 2009, the State charged defendant, Shartrese L. Grayned, with one count of burglary (720 ILCS 5/19-1(a) (West 2008)) and one count of retail theft in excess of $150 (720 ILCS 5/16A-3(a), 16A-10(3) (West 2008)). At the beginning of her December 2009 trial, defendant filed a motion *in limine*, seeking to prohibit certain other-crimes evidence. The State indicated it did not intend to present such evidence but noted such evidence could become relevant. The trial court granted the motion *in limine* as to the other-crimes evidence in the State's case in chief. During direct examination, one of the State's witnesses gave a nonresponsive answer that violated the order *in limine*. Defense counsel objected and sought a

mistrial. The court sustained the objection but denied the request for a mistrial. At the conclusion of the trial, the jury found defendant guilty of both charges. Defendant filed a posttrial motion, asserting, *inter alia*, the court should have granted a mistrial. After a January 2010 hearing, the court denied the motion. In February 2010, the court sentenced defendant to three years' imprisonment for burglary.

¶ 3 Defendant appeals, alleging the trial court erred by denying her motion for a mistrial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's charges list defendant and the following other codefendants: Kamberia Davis, Samone Grayned, and Barlinda Witherspoon. Davis and Samone are defendant's sisters. Two juveniles, C.D., and R.L., were also alleged to have been involved in the crime. The burglary charge alleged that, on July 17, 2009, defendants, without authority, knowingly entered the building of T.J. Maxx with the intent to commit therein a theft. The retail-theft charge was also based on defendants' actions related to T.J. Maxx on July 17, 2009.

¶ 6 On December 16, 2009, the trial court commenced defendant's trial. Defense counsel presented a motion *in limine*, seeking to prohibit the State, *inter alia*, from presenting testimony as to any alleged prior thefts by defendant or any codefendants at the T.J. Maxx store. The motion asserted any probative value of such other-crimes evidence was outweighed by its prejudicial effect. In response, the prosecutor stated he did not intend to introduce any evidence concerning the other crimes defendant had been involved in at T.J. Maxx. However, if defendant's evidence or cross-examination made such evidence relevant, he would seek to introduce it. The court allowed the motion *in limine* as to evidence in the State's case in chief but noted the

evidence may become relevant based on evidence presented by the defense either on cross-examination or if defendant chose to testify.

¶ 7 The evidence presented at defendant's trial that is relevant to the issue on appeal is as follows. For the State, Sean Davidson testified that, on July, 17, 2009, he was the loss-prevention detective for the Decatur, Illinois, T.J. Maxx store. At 7:20 p.m. that evening, he was in the loss-prevention office watching closed-circuit-television cameras. The camera images were digitally recorded in a time-lapse fashion, meaning it recorded a snapshot from each camera in a sequence and then started over again with the first camera. Such recording causes skips or delays in the video. While Davidson was watching the cameras, he was able to watch things in real time without any skips or delays. Davidson identified the State's exhibit No. 1 as surveillance footage from the T.J. Maxx, which he recorded on the evening of July 17, 2009.

¶ 8 While the recording played for the jurors, Davidson explained the footage was from a camera located in the southeast area of the store, which was focused on the store's entrance. The recording stated military time and the footage began at 19:21. At 19:22, Davidson received a call from the store manager and then enlarged the screen to view the southeast camera, which he focused on the shoe department. He was watching customers there, looking for signs someone might be attempting a theft, *i.e.*, removing a security tag or empty shopping bags from a purse. Davidson noted he primarily focused on the woman pushing the shop cart, who was later identified as Witherspoon. At 19:23:21, the camera was focused on three females, and Davidson identified defendant as the one in the middle wearing a pink shirt. At around 19:24:46, Davidson observed defendant select a pair of shoes with a security tag. He then saw defendant remove the tag by breaking it and dump the "defeated" tag onto a shelf that contained other shoes.

¶ 9 At 19:27:13, Davidson panned the camera located in the northwest section of the store and followed the individuals to the store's infant section. Davidson did not recall defendant being in the infant section. Around five minutes later, Davidson focuses the northwest camera on the junior's department. At 19:39:51, Davidson exited the loss-prevention office and headed to the front of the store. On his way to the front, he observed a shopping cart left by the women in the junior's department. A shirt was draped over the top of the cart. Davidson quickly checked the cart, finding numerous empty hangers on the bottom and noticing the merchandise he had watched the people select was now missing from the cart.

¶ 10 Davidson proceeded to the front of the store where the exit was located. He waited until the three females had passed all of the registers and had exited the building. When Davidson exited the building, he saw the females had begun running. Davidson then started to run after them. He identified himself as "T.J. Maxx loss prevention" and asked them to drop the merchandise in their possession. The females continued to run and entered a gold Chevrolet Impala. Davidson was already on the telephone with 9-1-1 and gave the dispatcher the vehicle's description, license plate number, and the direction it was heading.

¶ 11 After talking to the dispatcher, Davidson returned to the store and placed the cart left by the women in a secured area of the store. Davidson identified the State's exhibit No. 2 as a picture of the shopping cart as it was left in the store and the State's exhibit No. 3 as a picture of the shopping cart with clothing removed from the top of the cart to reveal the empty hangers. Once the cart was secure, Davidson went to the shoe department. There, he found a "defeated" security tag.

¶ 12 Thereafter, the Decatur police contacted him and inquired if he would be able to

identify the females in question. A police officer arrived at the store and took him to a spot about five blocks south of the store. Davidson observed the gold car that he had seen speed away from the store. The occupants stepped out of the car one at a time. Davidson was able to identify three of the females as the ones that ran from him and the other three females as being in the store around the other three. One of the females Davidson identified was defendant.

¶ 13 The police then transported Davidson back to the store. The police photographed the evidence Davidson had, and Davidson made a copy of the surveillance video for the police. Davidson was also presented with some merchandise. From the video, Davidson was able to identify most of it as T.J. Maxx merchandise. Some of the merchandise still had T.J. Maxx price tags. Davidson inventoried the stolen T.J. Maxx merchandise, which had a total value of $249. Davidson also identified the State's exhibit No. 4, which was a photograph of the recovered merchandise. Davidson testified most of the merchandise taken was infant clothing.

¶ 14 Another T.J. Maxx employee, Sharon Harris, testified that, on the evening in question, she was taking a break on one of the benches north of the store's exit. While sitting there, she observed three females, who were looking over their shoulders, exit the store. She then saw Davidson exit the store and the women then started running. The women were dropping merchandise as they ran. Harris observed them get into a car and speed off. The police later took her to a showup, but she was only able to identify one of the women and that woman was wearing a green outfit.

¶ 15 Decatur police department Sergeant Christopher Copeland testified he stopped a tan Chevrolet Malibu with six females. When the car stopped, a passenger he later learned was Witherspoon opened the car's rear passenger side door, exited the car, and began walking fast.

Sergeant Copeland ordered her to stop twice before she returned to the car. Witherspoon was the only occupant who tried to exit the car.

¶ 16 Decatur police officer Brandon Rolfs testified he was the detail officer for this incident, which meant he was the primary person doing the investigation. Officer Rolfs stated he was the officer that met with Davidson at the T.J. Maxx store and then took him to the showup at the scene of the traffic stop. Davidson identified all six individuals. Officer Rolfs did not believe Harris identified any of the women. After the showup, he took Davidson back to T.J. Maxx and returned to the scene of the traffic stop to retrieve the property that had been stolen from T.J. Maxx. Officer Rolfs explained the merchandise was strewn about the car's whole passenger compartment. Some items were on the floor next to the rear seat of the car, and a few items were near the center console. None of the purses recovered from the car contained T.J. Maxx merchandise. However, Witherspoon's pink purse that she had with her at T.J. Maxx contained a pair of small gardening sheers. Officer Rolfs then returned to the T.J. Maxx store with the recovered merchandise.

¶ 17 At T.J. Maxx, Officer Rolfs took photographs of the recovered merchandise and had Davidson complete an inventory sheet. Officer Rolfs also received a copy of the surveillance video. Office Rolfs identified the State's exhibit No. 4 as the photograph he took of the recovered merchandise. When the prosecutor addressed the State's exhibit No. 2, which was the photograph of the shopping cart the women had left behind in the T.J. Maxx store, the following exchange took place:

"Q. I am going to hand you what's been marked as People's Exhibit #2. Are you familiar with People's Exhibit #2?

A. Yes, sir.

Q. How?

A. While speaking with, while speaking with Mr. Davidson, with the manager, he advised that the suspects acted, he advised that they were part of a retail theft ring which had hit his store several times before.

[Defense counsel]: Objection.

THE COURT: Sustained."

¶ 18 Thereafter, the prosecutor asked for a sidebar, and the trial court excused the jury. Defense counsel made a motion for a mistrial. The prosecutor opposed defense counsel's motion. The court stated the following:

"Well, the statement that was made, in my view, was a violation of the order *in limine*. It was a non-responsive answer to a question that was asked by [the prosecutor]. So it certainly is not something that [the prosecutor] solicited. The objection was made promptly and sustained promptly. Certainly it is not the kind of thing that we like to have happen during a trial because it is, was evidence that was not to be brought out in the State's case in chief, but I don't think it rises to the level that would require a mistrial to be declared at this time. So the motion for mistrial is denied."

Defense counsel stated he did not want the court to instruct the jury to disregard the statement. Officer Rolfs resumed his testimony and noted the State's exhibit No. 2 was a photograph he took

of the shopping cart that the T.J. Maxx manager had presented to him. Officer Rolfs also identified the State's other photographs.

¶ 19 Officer Rolfs further testified he had a conversation with Witherspoon after she was taken into custody. Witherspoon admitted she had taken items from the T.J. Maxx store that evening. However, she denied using the garden sheers and had stated she had them for self-defense.

¶ 20 The State last presented the testimony of Witherspoon. She testified that, on July 17, 2009, she ran into Davis, whom she had known for 10 years, at the Total Essence hair salon. They talked, and then Davis left. Davis later returned to the salon to pick her up. Davis was driving Samone's car, and defendant, Samone, and two of their friends were also in the car. Witherspoon had also known defendant and Samone for 10 years. Witherspoon later learned one of the friends was named C.D. After she got into the car, Davis drove to T.J. Maxx. They did not make any stops along the way. While Witherspoon could not remember any exact words spoken in the car or who spoke or if anyone was listening, she knew the plan was to go in there to steal. When they arrived at T.J. Maxx, Witherspoon entered the store first because they told her to go in first. She could not recall who "they" were but knew she was supposed to go in first. They did not want to go in the store at the same time so they would not be near each other.

¶ 21 The prosecutor then played the surveillance video while asking Witherspoon questions. Witherspoon identified herself at the woman who entered the store at 19:21:11. She got a cart and started walking around the store. At 19:23:37, she pushed the cart into the shoe department with defendant and C.D. Witherspoon admitted she had control of the shopping cart during the entire video. While in the shoe department, she picked up some shoes that had tags on

them and placed them in the cart. Witherspoon later ditched the tags somewhere in the store. Witherspoon saw defendant take tags off a pair of shoes and put the shoes in her purse. Witherspoon then went to the infant section, but defendant was never in that area. At 19:34:54, defendant was shown in the junior's department, and Witherspoon was nearby. Witherspoon stated they were taking the "devices" out of their purses. At 19:35:34, the video shows some of the individuals who had gone to the store with Witherspoon. A minute later, they are looking at items in the cart and deciding what to take. At 19:37:54, Witherspoon was stuffing items in her purse. She took a pair of shoes and some baby items. Witherspoon testified she knew defendant took one pair of shoes but did not know the rest of the items she took. Others took items as well, but she could not remember what items they took. Shortly, after the items were stuffed in their purses, Witherspoon left the store with defendant and one of her friends.

¶ 22 As they exited the store, Witherspoon and the others were looking back to see if anyone was coming out of the door. When the man came out of the store and yelled at them to stop, everybody took off running. As she was running, Witherspoon lost her black hat and flip flops. Witherspoon ran back, got her flip flops, and then ran to the car. Witherspoon identified the hat in the State's exhibit No. 5 as being the hat she lost when she was running to the car. She further stated she had taken the white purse from the T.J. Maxx that was also shown in the State's exhibit No. 5. Witherspoon denied she had taken her pink purse into the store. When she reached the car, she got into the backseat with defendant and defendant's two friends. Davis was driving, and Samone was in the front passenger's seat. After Witherspoon got in the car, they left. Nothing was said because they were worried about getting away from the store. However, Witherspoon took the stolen items out of her purse and so did defendant and C.D.

¶ 23 When the police stopped the vehicle, Witherspoon admitted she got out and did not stop until the police officer ordered her to stop a second time. Witherspoon denied taking every single item depicted in the State's exhibit No. 4. Witherspoon further testified she had been charged with felony offenses in relationship to this incident and had a partial deal worked out with the State. Her bond had been reduced from $20,000 to $5,000, and her case had been continued for her cooperation. She hoped her testimony at defendant's trial would benefit her as far as an offer from the State. Additionally, Witherspoon admitted she had an aggravated-battery conviction, a driving-under-the-influence conviction, two misdemeanor retail-theft convictions, and a juvenile retail-theft conviction.

¶ 24 At the close of the State's evidence, defendant made another motion for a mistrial, which the trial court denied.

¶ 25 Defendant testified on her own behalf. She stated that on July 17, 2009, Davis called and asked her to come pick her up at the salon. Defendant drove to the salon, and when she met Davis at the salon, Witherspoon asked if they could take her to T.J. Maxx. They decided to take her, and Davis drove. Defendant sat in the backseat with Witherspoon, R.L., and C.D. Defendant did not recall any conversation on the way to T.J. Maxx and denied any mention of stealing items from T.J. Maxx. When they arrived at the store, Witherspoon went in first because she hopped out of the car as soon as they got there. Defendant entered with C.D. and C.D.'s baby. Defendant did not recall Davis and Samone entering until later.

¶ 26 When they were inside T.J. Maxx, defendant testified no conversations about taking or stealing items took place. Defendant identified herself as the woman wearing the pink shirt in the video. She denied (1) removing any tags or security devices from articles in the store

and (2) putting anything inside her purse in the store. Defendant admitted she put a shirt and some shoes in the cart that Witherspoon was pushing. She did not buy those items when she left the store because she could not find pants to match the shirt and she left the shoes in the cart after trying them on. She had shown R.L. the shoes because they were cute. Defendant denied having any merchandise in her possession when she left the store.

¶ 27 Defendant further testified she left the store with R.L. and Witherspoon. When she was close to the car she looked back and saw Witherspoon and R.L. running. Witherspoon lost her hat and shoes. When Witherspoon went back to get them, the loss-prevention man almost grabbed her. Defendant did not get out of the car at that time because she was on probation for aggravated battery and was not supposed to be around such activity. After everyone was in the car, Davis backed out of the parking spot and drove off. No one said anything as the car was driving away. After the police stopped the car, Witherspoon was dropping stuff as she tried to exit the car and that was how the articles of clothing got all over the car. Defendant denied seeing Witherspoon take any items from T.J. Maxx.

¶ 28 When both parties rested, defendant again moved for a mistrial based on Officer Rolfs' improper statement. The trial court again denied the motion. At the conclusion of the trial, the jury found defendant guilty of both charges.

¶ 29 On January 19, 2010, defendant filed a motion for a judgment notwithstanding the verdict or, in the alternative, a new trial. In the motion, defendant asserted (1) the trial court should have granted her mistrial motion, (2) the court erred by denying her motion for a directed verdict, and (3) the State's evidence was insufficient to prove beyond a reasonable doubt defendant's guilt. On January 25, 2010, the court held a hearing on the motion and denied it. In

explaining it ruling, the court stated the following: "I continue to believe that with the way the isolated statement was made, the prompt objections, prompt sustaining of the objection that any error by the witness on his own interjecting that information was cured ***." On February 11, 2010, the court sentenced defendant to three years' imprisonment for burglary. The court did not sentence defendant for retail theft under the one-act, one-crime rule. See *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977).

¶ 30 On February 23, 2010, defendant filed a notice of appeal. On March 2, 2010, defendant filed an amended notice of appeal that indicated he was appealing both his conviction and sentence. The amended notice complied with Illinois Supreme Court Rules 606 (eff. Mar. 20, 2009) and 303(b)(5) (eff. May 30, 2008). Thus, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. July 1, 1971).

¶ 31 II. ANALYSIS

¶ 32 Defendant's sole argument on appeal is the trial court erred by denying her motion for a mistrial and thus depriving her of a fair trial. "A trial court is vested with broad discretion to determine the propriety of declaring a mistrial. " *McDonnell v. McPartlin*, 192 Ill. 2d 505, 534, 736 N.E.2d 1074, 1091 (2000). A reviewing court will not disturb a trial court's denial of a defendant's motion for a mistrial unless the denial was a clear abuse of discretion. *People v. Nelson*, 235 Ill. 2d 386, 435, 922 N.E.2d 1056, 1083 (2009). "A trial court abuses its discretion only when its ruling is arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court." (Internal quotation marks omitted.) *People v. Santos*, 211 Ill. 2d 395, 401, 813 N.E.2d 159, 162 (2004) (quoting *People v. Donoho*, 204 Ill. 2d 159, 182, 788 N.E.2d 707, 721 (2003)).

¶ 33 Our supreme court has explained "[a] mistrial should be granted where an error of such gravity has occurred that the defendant has been denied fundamental fairness such that continuation of the proceedings would defeat the ends of justice." *Nelson*, 235 Ill. 2d at 435, 922 N.E.2d at 1083. However, if the alleged error did not prejudice the defendant or otherwise impair the defendant's right to a fair trial, a mistrial is not warranted. *McDonnell*, 192 Ill. 2d at 534-35, 736 N.E.2d at 1091. "Error that occurs through the violation of a motion *in limine* is subject to the same analysis, *i.e.*, such a violation will be deemed an appropriate ground for mistrial only where the violation resulted in the denial of a fair trial." *McDonnell*, 192 Ill. 2d at 535, 736 N.E.2d at 1091.

¶ 34 In support of her argument a mistrial was warranted, defendant first asserts the introduction of the other-crimes evidence in violation of the order *in limine* was the State's fault. The State does not contest that assertion. However, the significance of the State's responsibility is unclear. Defendant cites *People v. Rice*, 234 Ill. App. 3d 12, 19, 599 N.E.2d 1253, 1259 (1992), in which the reviewing court explained how the State was responsible for the nonresponsive answer that violated the order *in limine*. Despite finding the State responsible, the *Rice* court concluded the improper statement did not so unfairly prejudice the defendant that he was denied a fair trial. *Rice*, 234 Ill. App. 3d at 19, 599 N.E.2d at 1259. Thus, the conclusion in *Rice* highlights the fact the focus of reviewing a denial of a mistrial motion is on prejudice and the defendant receiving a fair trial.

¶ 35 Defendant also contends the improper testimony prejudiced her because (1) it was other-crimes evidence of the same crime at the same store on prior occasions, and (2) it completely undermined her theory of innocence. She further argues the trial court's actions did

not cure the harm caused by the improper testimony.

¶ 36 As to other-crimes evidence, such evidence is objectionable "because it carries the risk that a jury will convict a defendant merely because it believes the defendant is a bad person who deserves punishment." *People v. Hall*, 194 Ill. 2d 305, 339, 743 N.E.2d 521, 541 (2000). Moreover, when the prior crime is the same or substantially the same conduct for which the defendant is on trial, other reasons for exclusion arise such as "the inevitable pressure on lay jurors to believe that if he did it before he probably did so this time." (Internal quotation marks omitted.) *People v. Williams*, 161 Ill. 2d 1, 38, 641 N.E.2d 296, 311 (1994) (quoting *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967)). However, that does not mean the admission of such evidence is completely barred and automatic reversal is warranted. See *Williams*, 161 Ill. 2d at 38, 641 N.E.2d at 311 (noting evidence of similar crimes should be admitted sparingly). While an improper admission of other-crimes evidence ordinarily warrants reversal, the improper "evidence must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different. If it is unlikely that the error influenced the jury, reversal is not warranted." *Hall*, 194 Ill. 2d at 339, 743 N.E.2d at 541. Morever, when improper other-crime evidence is introduced in violation of an order *in limine* and a timely objection is made, "the court can, by sustaining the objection or instructing the jury to disregard the question and answer, usually correct the error." *Hall*, 194 Ill. 2d at 342, 743 N.E.2d at 542. However, our supreme court has recognized "situations exist where the improper question is so damaging that a trial court cannot cure the prejudicial effect." *Hall*, 194 Ill. 2d at 342, 743 N.E.2d at 542.

¶ 37 Defendant cites several cases where the prejudicial effect of the improper

testimony could not be cured and the defendant was denied a fair trial. In *People v. Gregory*, 22 Ill. 2d 601, 603, 177 N.E.2d 120, 122 (1961), the improper other-crimes evidence consisted of a confession by some of the defendants, which contained several references to "prior jobs" and the usage of guns during those jobs. While the supreme court concluded the error in admitting the other-crimes evidence was not cured by the court's sustaining the objection and giving an instruction, it emphasized defendant was denied a fair trial based on both the references to the prior criminal acts and the improper statements by the prosecutor in closing arguments. *Gregory*, 22 Ill. 2d at 604-06, 177 N.E.2d at 122-23.

¶ 38 In *People v. Lewis*, 269 Ill. App. 3d 523, 526, 646 N.E.2d 305, 307 (1995), a detective testified T.S., the alleged victim, agreed to take a polygraph test. The trial court sustained the defendant's contemporaneous objection and instructed the jury to disregard it. *Lewis,* 269 Ill. App. 3d at 526, 646 N.E.2d at 307. No further remarks concerning a polygraph exam were made, and the State offered no comment upon the detective's remark. *Lewis,* 269 Ill. App. 3d at 526, 646 N.E.2d at 307. This court noted the supreme court "has repeatedly and emphatically condemned references at trial to polygraph examinations, particularly when a jury might consider such a reference to constitute some evidence of defendant's guilt." *Lewis,* 269 Ill. App. 3d at 527, 646 N.E.2d at 308. In finding the defendant was denied his right to a fair trial, this court emphasized the extensive conflict at trial between T.S.'s testimony and the defendant's statements regarding T.S. that were introduced at trial. *Lewis,* 269 Ill. App. 3d at 527, 646 N.E.2d at 308. Thus, the improper polygraph reference could have substantially enhanced T.S.'s credibility in the eyes of the jury. *Lewis,* 269 Ill. App. 3d at 527, 646 N.E.2d at 308.

¶ 39 Defendant also notes the following language by the First District in *People v.*

Rivera, 277 Ill. App. 3d 811, 819, 661 N.E.2d 429, 434 (1996):

> "The courts have used other descriptive phrases to illustrate the point that substantial prejudice does not vanish from the human mind simply because a judge says it should: 'Driving a nail into a board and then pulling the nail out does not remove the hole' [citation]; 'The naive assumption that prejudicial effects can be overcome by instructions to the jury *** all practicing lawyers know to be unmitigated fiction' [citation]; 'To suggest that the jury disregard such explosive evidence is, in the words of Judge Learned Hand, a "recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody's else" ' [citations]."

¶ 40 The State argues it is unlikely the contested evidence influenced the jury because of the compelling evidence of defendant's guilt. The State notes that, in *Hall*, 194 Ill. 2d at 340, 743 N.E.2d at 541, the improper other-crimes evidence was not a material factor in the defendant's conviction because of the State's strong case against the defendant. Defendant disagrees the State's case was strong, arguing the outcome of the case "largely boiled down to a credibility contest" between Witherspoon and defendant. Defendant's description of the evidence fails to take into account all of the circumstantial evidence, the surveillance tape, and the testimony of the T.J. Maxx employees.

¶ 41 We recognize the supreme court has emphasized "presence at the commission of the crime, even when joined with flight from the crime or knowledge of its commission, is not

sufficient to establish accountability." *People v. Perez*, 189 Ill. 2d 254, 268, 725 N.E.2d 1258, 1265 (2000). However, it has also stated the following:

> "Proof that the defendant was present during the perpetration of the offense, that he fled from the scene, that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the trier of fact may consider in determining the defendant's legal accountability." *Perez*, 189 Ill. 2d at 267, 725 N.E.2d at 1265.

In this case, all of the aforementioned factors are present as the evidence is uncontested. Witherspoon stole merchandise from T.J. Maxx and defendant (1) went with Witherspoon, whom she had known for 10 years, to T.J. Maxx; (2) was with Witherspoon a great deal of the time they were in the store; (3) exited the store with Witherspoon; (4) got in the same car with Witherspoon; and (5) never tried to report the incident to police.

¶ 42 More important, Witherspoon's testimony that defendant removed a security tag from a pair of shoes and put them in her purse is corroborated by Davidson's testimony and the surveillance video. The video shows defendant look around and pull at one of the shoes in an abnormal manner. Defendant is also seen reaching into the shoe rack a couple of times after that action. Moreover, defendant is shown setting her purse in the bottom of Witherspoon's cart, holding a pair of shoes, and pushing the shoes that are bottom to bottom into something in the cart. Defendant is then no longer holding anything, and the purse is still in Witherspoon's cart. Davidson testified he saw, in real time on the surveillance video, defendant remove a security tag from the shoes and place the tag on a shelf that contained other shoes. After the women had left

the parking lot, Davidson returned to the shoe aisle and found a defeated security tag. Although Witherspoon testified she ditched security tags in the store, she did not indicate it was in the shoe aisle.

¶ 43 While defendant is away from Witherspoon for around five minutes when Witherspoon is in the infant section, defendant rejoins Witherspoon in the junior's section. Witherspoon had picked up a plain white shirt and draped it over the top of the cart. At the end of one of the aisles in the junior's department, defendant is seen holding that white shirt up at shoulder level and looking around as Witherspoon, who is right next to her, sorts through the items at the bottom of the cart. Some of the other women later approach the cart and look into it, and defendant is also looking into the cart at that time. Defendant continues to be right next to Witherspoon as she appears to be doing something in the cart. Witherspoon, in fact, testified she was stuffing items in her purse. While near Witherspoon and her cart, defendant's purse leaves her shoulder for a period of time and cannot be seen because of the clothing racks. Defendant puts it back up on her shoulder with the assistance of R.L. and starts her way to the exit. Witherspoon is not far behind her. When Davidson gets to the parking lot, defendant and the others are already running to the car, and Harris testified that three women, looking over their shoulders, had exited the store and bolted when Davidson exited.

¶ 44 Accordingly, our review of the record shows it is the surveillance video that supports Davidson's and Witherspoon's testimony and destroys defendant's theory of innocence, not Officer Rolfs' improper, isolated statement.

¶ 45 Moreover, we note this case is different from *Gregory* for two reasons. First, in that case, the prosecutor made improper arguments in addition to the improper other-crimes

evidence, and those errors together denied the defendant a fair trial. See *Gregory*, 22 Ill. 2d at 604, 177 N.E.2d at 122. This case involves only one error. Second, in contrast to a single isolated statement, the improper other-crimes evidence was multiple references to other crimes in a confession of several of the defendants. See *Gregory*, 22 Ill. 2d at 603, 177 N.E.2d at 122.

¶ 46 This case is also distinguishable from *Lewis*, where we emphasized the credibility of one of the State's witness's was a significant issue of contention at trial and the improper testimony could have bolstered her credibility. See *Lewis,* 269 Ill. App. 3d at 527, 646 N.E.2d at 308. As explained, we disagree this case is a credibility battle between defendant and her codefendant because of the surveillance video and other witnesses' testimony. Thus, the statement at issue here is not as prejudicial as the one in *Lewis*.

¶ 47 Given the curative action of the court to the isolated statement along with the State's strong case, we find the violation of the order *in limine* did not deprive defendant of a fair trial. Accordingly, the trial court did not abuse its discretion by denying defendant's motion for a mistrial.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 50 Affirmed.